IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 220 of 1984

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNITED INDIA INS. CO. LTD.

Versus

DINESHKUMAR C SONAWALA

Appearance:

1. First Appeal No. 220 of 1984

MR KF DALAL for Appellant

MR SK BUKHARI for Respondent No. 1

MR RR MARSHALL for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 22/12/2004

ORAL JUDGEMENT

Instant appeal under Section 110(D) of the Motor Vehicles Act is directed against the judgement and award dated 30.8.1983 rendered in MACP No. 42 of 1982 by the

MACT(Main), Surat, by which the claim petition filed by respondent No.1/original claimant to recover the amount of compensation of Rs.9,999/- for the injuries sustained by him in a vehicular accident, came to be partly allowed and thereby appellant and respondent Nos. 2 and 3 were directed to pay Rs.7000/- with running interest @ 6% per annum from the date of the claim petition till realisation and proportionate cost, to the claimant. It was further directed that the appellant Insurance Company shall satisfy the award, including interest and cost, as if judgement debtor.

2. As per the averments made in the claim petition, respondent No.1, who is the original claimant, was proceeding on his bicycle on 5.12.1981 from Rander to Surat. When he was passing through the Nehru Bridge, the Truck bearing registration No. GTG/1644 came from behind, driven in rash and negligent manner and dashed the bicycle, as a result thereof, the claimant was thrown off the bicycle and received injuries, including fracture. He was admitted at Maskati Hospital, Surat. According to the case of the claimant, the driver of the truck was driving it at a high speed, rashly and negligently. Respondent No.2 was the driver at the relevant time and Respondent No.3 was the owner of the vehicle involved in the accident which was insured with the appellant. Putting forth the claim of compensation, it was averred that he had incurred medical expenses and remained as an indoor patient for 10 days and could not attend his work for three months, and therefore, on all these counts, he has claimed Rs. 9,999/by way of compensation and filed the petition to recover the said amount together with the interest and cost from the driver, owner and insurer.

3. The petition was contested by the driver, owner and the insurer by filing written statement. The driver and the owner of the Truck had filed their written statement Exh. 26 whereas Insurance Company, i.e. the appellant, had filed its written statement Exh. 31, wherein, the accident was denied and liability to pay compensation was also denied. It was also pleaded that the claim was highly exaggerated . On behalf of the Insurance Company it was contended that though the driver was holding the license with an endorsement "Non Transport Vehicle", he was driving "Transport Vehicle", and therefore, the Insurance Company was not liable to indemnify the Respondent No.3 insured and it was therefore urged to dismiss the claim petition.

4. The Tribunal has framed the points for

determination and, on appreciation, evaluation and critical analysis of the evidence, came to the conclusion that the claimant sustained injury in the vehicular accident that took place because of the rash and negligent driving of the Truck on the part of the driver of the Truck bearing registration No. GTG/1644. It was also held that the claimant has proved the damages to the extent of Rs.7000/- and, therefore, the Tribunal has awarded the said amount, which has given rise to the present appeal at the instance of the Insurance Company.

5. The sole contention advanced by Mr. K.F.Dalal, learned advocate of the appellant - Insurance Company is that the Driver was holding 'Non-Taransport Vehicle' license whereas he was driving the transport vehicle, therefore the Insurance Company cannot be saddled with the liability to pay the compensation, and therefore this appeal is required to be allowed by modifying the award, by excluding the Insurance Company from the liability of paying the compensation.

6. Mr. S.K.Bukhari, learned advocate of the claimant and Mr. R.R.Marshal, learned advocate of the driver and the owner, jointly contended that there is no infirmity in passing the impugned award. The learned Judge of the Tribunal has considered all the relevant material evidence on record and has come to the conclusion that the driver was authorised to dirve any heavy motor vehicle as per license produced at Exh.42 and therefore the Insurance Company is rightly saddled with the liability of payment of compensation which is awarded in favour of the claimant. They, therefore, urged to dismiss the appeal.

7. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgement and award and the set of evidence supplied by the learned advocates appearing for the parties during the course of their submissions.

8. So far as the factum of accident is concerned, there is no dispute. There is also no dispute with regard to the involvement of the vehicle in question in the accident. On having perusal of the impugned judgement and award and more particularly from the panchnama Exh. 39, it could be seen that the accident had occurred on the extreme left side of the bridge where the claimant was proceeding from Rander to Surat. Blood was lying at a distance of 4 meters and the bicycle was also lying at that place. From the aforesaid evidence,

there is no manner of doubt that the claimant was proceeding on the extreme left side of the road. Therefore, learned Judge of the Tribunal has rightly held that the accident had occurred because of the rash and negligent driving on the part of the Driver of the Truck in question.

9. So far as the quantification of the compensation is concerned, the learned Judge has awarded Rs.6000/- against the mental shock and suffering, Rs.800/- for loss of wages and Rs.200/- for medical expenses. In all, the learned Judge has awarded Rs.7000/- as compensation, which, according to this Court, is a just compensation and does not call for any interference in this appeal.

10. The contention that the Driver was having a license of 'Non Transport Vehicle' whereas he was driving the Transport Vehicle, also did not find favour with the Tribunal. The licence was produced at Exhibit 42. On having perusal of the same, it is abundantly clear that the Driver was authorised to drive any heavy motor vehicle and the Truck is a heavy motor vehicle.

11. In aforesaid view of the matter, the contention advanced by Mr. Dalal is devoid of any merit and is required to be rejected.

12. On overall view of the matter, this Court is satisfied that no illegality is committed by the learned Judge of the Tribunal in passing the impugned award. This Court finds itself in complete agreement with the finding recorded, ultimate conclusion reached and the resultant award passed by the learned Judge of the Tribunal.

13. Seen in the above context, this appeal lacks merit and deserves to be dismissed.

14. For the foregoing reasons, the appeal fails and accordingly it is dismissed with no order as to costs.

15. It is stated by the learned advocates appearing for the parties that, at the time of admission of this appeal, the claimant was permitted to withdraw 50% of the amount deposited with the Tribunal. If that be so, the remaining 50% of the amount deposited with the Tribunal, which the Tribunal has invested by way of fixed deposit, is directed to be encashed and paid to the claimant unconditionally.

(A.M.Kapadia,J)

Jayanti*